

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	FCC 03-323
)	

To: The Commission

COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools, the coalition of 61 of the nation's largest central city school districts, requests the consideration of the following comments regarding the Commission's December 23, 2003 Third Report and Order and Second Further Notice of Proposed Rule Making on newly adopted rules for Priority Two eligibility and equipment transfer, as well as the ongoing discussion of proposed changes to improve the efficiency, benefits, and oversight of the E-Rate program (FCC 03-323).

Introduction

The Council of the Great City Schools, the coalition of 61 of the nation's largest central city school districts, is pleased to submit comments to the Commission's December 23, 2003 Third Report and Order (Order) and Second Further Notice of Proposed Rule Making (FNPRM). The Council has long supported the effort and goals of the Commission to improve and streamline the E-Rate program, reduce mistreatment of the program's support, and ensure the fair distribution of intended benefits. The E-Rate program has no greater advocate than the city school systems that enroll the highest number of disadvantaged children, employ the largest number of teachers, and occupy the greatest number of school buildings. Specifically, the Council of the Great City Schools represents approximately 7.3 urban students, including 33% of the nation's minority students, 31% of the nation's English Language Learners, and 26% of the nation's children eligible for free and reduced-price lunch. The value of universal service is immeasurable for these students and the inner-city, where the E-Rate can be used to bolster shallow resources and enhance the delivery of modern educational instruction. The Council has offered its assistance to the Commission by providing input on past Notices and in public forums, and we offer the following comments in response to the recent Order and FNPRM.

Third Report and Order

Limiting Internal Connections Support

The Council of the Great City School appreciates the Commission's careful deliberations on ways to provide internal connections support to economically disadvantaged school districts beyond the 90% level, and is pleased that the current Order sought to enact this change with an adjustment to the annual eligibility for reimbursement. This new rule will allow Priority Two funding to reach the poor schools and students that the Commission has been working to assist, while also requiring all applicants to strengthen their planning skills and carefully review all applications submitted to the SLD. The Council is also pleased that maintenance services are excluded from the Commission's decision on Priority Two limitations, as recurring maintenance on telecommunications equipment is an essential component of local technology plans, and is vital to protect and extend the investment made by the FCC and local school districts.

Urban districts are also hopeful that implementation of the new rule will not preclude reimbursements for legitimate projects that will be necessary to provide modern educational services in the nation's oldest and most overcrowded school buildings. In accordance with the new rules, an urban school may spend two years to wire their classrooms, as the Order suggests they often need to do (Paragraph 18), but the district may find soon afterwards that additional space is needed in that building. Throughout the year, certain school buildings in a district may experience an influx of students as a result of required transfers under the No Child Left Behind Act, changes in urban housing and development, or a wave of recent immigrant settlement.

Due to state laws on class-size ratios or fire, health, and safety codes, each year the affected schools must come up with creative ways to find new space for these children, often in recently built additions or converted, unwired, non-instructional rooms. As a result of the Commission's Order, school districts have begun to adjust their planning and application processes to adhere to the twice-ever-five-years rule, but the Administrator should also recognize that attendance at schools, urban ones in particular, changes more often and more unpredictably than that. In their decision on equipment transfers, the Commission recognized that special circumstances such as school closings and remodeling will require flexibility. When such circumstances inevitably arise with regard to internal connections, children learning in these locations should not have to wait three years for the technology support that will enhance their education, and the Council hopes that experiences that are beyond the control of the district and their students are also given their due consideration.

Equipment Transfer and Eligible Services

The Council supports the change made by the Commission that bars the transfer of equipment from one eligible location before three years, as well as the decision to annually define eligible services. Some of the alternatives considered by the Commission, including requiring the Administrator to develop and update "useful life" guidelines and lists of endorsed products, would have been an increasingly burdensome task, and USAC's decisions may have become subjected to repeated questioning and repeated appeal. The new rules outlined in the recent Order delineate specific and reliable timelines, which will allow districts to further refine their planning process, and will

require all participants to strictly review their applications for reimbursement. The Council expects that guidance and clarification on the three-year rule, which USAC may have already developed, be made available so districts can know the time frames in question for specific circumstances, such as whether the new rule applies to equipment purchased less than three years before the rule change. A useful table of examples was included in Appendix C of the recent Order, and a similar one will be helpful for districts in adhering to the new rule regarding the transfer of equipment.

Second Further Notice of Proposed Rulemaking

Adjusting the Discount Matrix and Funding Priority

The Council opposes the Commission's proposal to lower the discount matrix from the current level of 90%, and feels that such a move would represent a major and unnecessary shift in the operations, focus, and intent of the program. The Commission itself, in explaining why limiting internal connections support to twice every five years would not harm the poorest applicants, explained succinctly, "Indeed, program rules continue to provide greater discounts for the most economically disadvantaged schools and libraries" (Paragraph 15). It would be contradictory and confusing for the Commission to alter the discount provision espoused in the same decision, and such a change may call into question the rationale for the new internal connections limitation.

The Council believes that the rule changes limiting Priority Two eligibility and equipment transfer will address the issues which have stretched the internal connections fund in the past. These new rules will achieve the Commission's goal of providing more reimbursements to applicants below 90% while strengthening program integrity, and additional changes are not needed. Adjusting the discount matrix and removing the priority for the nation's absolute poorest schools, as proposed in the FNPRM, will clearly have a negative financial impact on these entities, and the result will be an E-Rate program that no longer recognizes or addresses the additional challenges that applicants at the highest level of poverty face in providing a high-quality education.

In previous NPRM's, the Commission sought to retain the focus of the E-Rate program on the nation's poorest school and libraries, while also delivering assistance to economically disadvantaged applicants that are just below the highest level of poverty. In its comments to these past Notices, the Council has supported extending the reimbursement benefits through adjustments to the annual eligibility guidelines, and not changes to the discount matrix or funding priority for the poorest schools. The 90% discount and priority for the nation's poorest schools remains vital today, as state and local budget cuts, as well as freezes or reductions in most federal education appropriations, have left high poverty districts with even less resources than when the E-Rate program first began.

In Florida's Miami-Dade County Public Schools, the school district has 158 schools at the 90% discount level, and 57 of those buildings have yet to receive support for internal connections because scarce resources make it difficult to raise the local 10% that is needed to complete E-Rate projects. This situation is not uncommon in urban districts

that have unusually high numbers of schools eligible for 90% discount. One-hundred of Boston's 134 school buildings are eligible for the 90% discount, while the Houston Independent School District has 230 schools, out of 299, located in the highest band. Any decrease in the discount offered to the poorest applicants may permanently put E-Rate reimbursements out of reach for these schools and the students the discounts were specifically intended to support.

In calling for retention of the 90% discount and priority, the Council also rejects the suggestions by commenters that the E-Rate should shift its focus and become a program that provides equitable resources to applicants from all discount bands (Paragraph 60). These comments, as well as the proposal to lower the maximum discount, at a minimum, to 70% (Paragraph 61), will undermine the often-stated goal of the Commission to provide universal service discounts to those schools and libraries that are also economically disadvantaged, albeit not to the same extreme degree as those in the 90% band (Paragraph 15). While the Council agrees that there are economically disadvantaged applicants in the 80% band that have been unable to receive reimbursements due to the funding cap, the schools and libraries in even lower bands have enrollments reaching average poverty levels for the nation. Schools with average levels of students eligible for free and reduced-price lunch can not truly be classified as economically disadvantaged, and the request for equal status with poorer schools is an attempt to conceal the greater resources that these applicants, by definition, already possess.

The Council requests that no change to the discount matrix and priority be enacted, as the new limitation and transfer rules were enacted to solve the very issue posed again in the FNPRM. The Commission was correct in its attempt to spread reimbursements to economically disadvantaged applicants, and has been able to make that change with the adoption of new eligibility rules. But changes that would require the nation's poorest schools and libraries to at least double their costs would undermine the success the E-Rate program has come to know. The recent rule changes came after multiple years of input through public comments, testimony at Commission forums, an SLD Task Force, and intense deliberations at the FCC, and certainly any additional decisions should follow a similar course and require careful consideration of the impact on the E-Rate program and its intended beneficiaries.

Cost-Effective Funding Requests

Urban school districts are also wary of the cost-effective funding proposal suggested for the universal service program, and does not support the introduction of a per-pupil, per-building, or per-applicant ceiling for the E-Rate. While the Council shares the Commission's endeavor to ensure that participants base their applications on specific needs and the most cost-effective services, the new program rules for Priority Two funding and equipment transfers establish additional criteria to ensure that applicant requests are made in accordance with these objectives.

Any cap on reimbursements that the Commission considers would have to be based on an evolving and lengthy list of factors, which in order to be fair to applicants of all sizes and locations must be nothing less than exhaustive. The creation of such a formula will place an enormous burden on the Administrator to include all possible circumstances allowed under existing rules, and the task of keeping the list of factors up-to-date and revised

appropriately may prove impossible. While a school's enrollment has likely been identified as a factor to include, much more complex factors such as age of the building facility, square footage, geographic region, and a number of other market factors must also be included.

For example, in addition to the general higher cost of services in the cities, urban classrooms are housed in the nation's oldest schools, and any work in those buildings often has to account for lead paint and asbestos. While urban schools do not wish the E-Rate to pay to remove these items, workers must be certified to work in these conditions, and the resulting higher labor rates increase the costs of many urban technology projects. The Council is concerned that any ceiling imposed will have a negative impact on urban districts with the highest costs and the largest funding commitments, and their schools will be penalized as a result of factors beyond their control. While the proposal to develop a cap is well-intended, there is a distinct possibility that any calculated total would never account for all possible situations that districts encounter, and which are not penalized in the current request system.

Competitive Bidding Process

The Council is eager to explore changes by the Commission that would limit the requirements associated with the Form 470, including the decision to eliminate it entirely. While the goal and intent of the Form 470 is important, and well aligned with the overall mission of the E-Rate, many districts have not found the Form 470 process useful in getting bids for universal service projects. Indeed, a large number of urban school districts have never received one bid as a result of the process.

Schools districts have complex state purchasing rules which they must strictly adhere to, which they are not able to waive, and which are not a consideration in the Form 470 process. In addition to state regulations, many districts also have a local compliance office where they must file all bids and verify contracts with outside providers. Since there is very little coordination between the state and universal service requirements, there are more difficulties than benefits when districts have to meet local procurement regulations and the mandates of the E-rate's competitive bidding process.

The Form 470 could be retained for the applicants that find it useful, while permitting an alternative that recognizes local bidding requirements and allows the utilization of an existing state or Federal (e.g. GSA) contract. This substitution could be enacted by requiring applicants to sign a disclosure certifying that such state or master list was the source of the vendor contracts, and this alternative will be of greater use to Council school districts than the Form 470. Such a change would preserve the important intent of the current Form, and ensures that the goods or services covered by the existing contract have already been through a formal public bid process. By recognizing these contracts, the Commission would lift the burden of duplicate bidding that districts undertake in order to achieve compliance with the E-rate, usually without benefit.

Wide Area Networks and Dark Fiber

The Council shares the Commission's concern that the leasing of Wide Area Networks (WANs) in order to receive Priority One reimbursements may be a practice undertaken in order to divert funds from high poverty applicants under Priority Two. In a previous

NPRM, and under different program rules, the Council recommended allowing a payment to be amortized over five years to minimize the impact of such requests on Priority Two funding. As a result of the recent rule changes, however, the three year minimum imposed in the *Brooklyn Order* should be retained.

The continuing changes in the E-Rate program rules, as well as the delay applicants have experienced awaiting inquiries, appeals and receipt of funding commitments, finds urban school districts unwilling to extend the number of times they must submit an application for such services, as well as extend the period during which they must await reimbursement from the SLD. Furthermore, in its recent Order the Commission made two of the most significant changes to the program since the E-Rate's inception, and the exact effect of these new rules on Priority One and Priority Two funds can not yet be determined. The implementation and resulting effects of the rule changes must be allowed before any additional proposals, originally suggested and based on now obsolete disbursement patterns, are considered.

In its mission to maximize available funding resources, the Commission can further foster and promote the ability of school districts to select the most cost-effective telecommunications solution by permitting the inclusion of dark fiber as an eligible connectivity option. Much of the hesitancy for support in the past was a result of the apprehension expressed by telecommunications companies, who may lose substantial future profit if fiber overtakes conventional telecommunications connectivity options. However, in dense urban areas, the return on investment of a leased-fiber network can be valuable for many years to come, particularly as provisioning systems and premise devices improve with technological advancements. The cost benefit of dark fiber aligns well with the financial goals of the E-Rate, and increasing the capacity for school districts is certainly a sound investment as technology services and instructional delivery increase rapidly.

Recordkeeping Requirements, Cost Recovery, and SLD Audits.

The Council supports the codification of the current rule which requires school districts to maintain records for five years, and would support the implementation of such a rule for service providers as well. What would be of equal or greater assistance to the E-Rate program, however, is an exact list of the documents required for retention, as well as the documents which may be requested during an audit.

Urban districts are a seemingly frequent target of audits, and the collective sense after these experiences is that the auditor did not know what to look for or which documents to request, and the bulk of the district time is spent processing trivial requests. A comprehensive list of the documentation districts should be able to provide, in general or in response to a review, would lend credibility and succinctness to an audit process that is currently renowned only for its inefficiency and protracted duration.

As we have offered in past comments, the Council suggests that the Commission further review the efficacy of the audit operation utilized by the E-Rate. From the program's inception, the audits have suffered from a lack of organization and informed personnel. Auditors are not versed in the details of the E-Rate and public administration, and require the tutelage of local program administrators to understand the process. Furthermore,

districts routinely have to defend actions, purchases, and processes done in accordance with the rules for the funding year in question, while the auditors persist in holding districts accountable for changes made in later program years. The Commission and SLD must make it clear to auditors and districts that the reviews being performed, and any cost recovery that occurs as a result, are based only on the program rules that were in place at the time of the applicable funding year, and not on the rules at the time of the audit. Delineating specific recordkeeping requirements as suggested above will help facilitate improved information collection during the audit, and will result in a more useful final report. Such an outcome will make the process more effective for auditors and less detrimental for applicants.

In addition to the time-consuming task of working with auditors, urban districts have been subjected repeatedly to SLD's Program Integrity Assurance (PIA), Item 25 pre-audit, or Selective Review Process. There are more than a handful of urban school districts that have undergone these reviews for a number of consecutive years. For those large districts that annually have to reassign or dedicate staff for the purpose of handling relentless paperwork requests, the targeting of urban districts for a review every year seems to be extremely punitive. Even more frustrating is the lack of feedback from SLD after the process is completed; depending on the type of review, districts hurry to provide a response to the inquiries within a specific and narrow time frame (often between seven and 21 days), and then go months without hearing from the SLD.

The effects of such a delay have negative repercussions at the local level, not only financially, but also in terms of the long-term planning ability of applicants that the E-Rate was meant to foster. For example, the Jefferson County Public Schools in Louisville, Kentucky underwent a Selective Review for their reimbursement application in Funding Year 2002. The district filed an E-rate application in January 2002, for the funding year beginning on July 1, 2002 through June 30, 2003. In December 2002, six months after the start of the funding period, the district was notified that its application was undergoing a review, which they responded to by February 2003. The district finally received their Funding Year 2002 commitment letter in January of 2004, two years after they submitted their original application, and six months after the SLD began disbursing funding commitments for Year 2003.

The result of this drawn out response time and uncertainty of funding was a tough decision making process at the local level, during which no input or schedule for resolution was provided by the SLD. In the end, Jefferson County Public Schools had to find over \$2 million in additional local dollars in order to keep their implementation plans on schedule, maintain good relations with their service providers, and provide communications support for the technology already in place. In the current economic climate, the leveraging of additional local funding can be difficult, and with districts stretching every dollar, also surrendering the interest that they would have realized with an earlier funding commitment is costly.

Many other school districts, however, simply do not have the ability to temporarily support their own projects, and similar circumstances have seen projects abandoned by the time approval from the SLD finally arrives. School districts are unable to count on the availability of funds, and large, urban systems appear to be unreasonably affected by

delays. The experience of the Jefferson County schools is unfortunately not unique to their district, or that particular funding year.

As a result of the delays that districts have encountered when cooperating with SLD, the Council also can not support the proposal of the Commission barring applicants from receiving any further benefits from the E-Rate while awaiting resolution of commitment adjustment issues. Not only would this rule dissuade applicants from pursuing appeals, but districts in the past have realized that resolving an issue with the E-Rate program can often mean a waiting period of years. This is extremely unfair to the students who rely on the benefits of the E-Rate, as well as the schools, all of whom will be punished unfairly due to past actions for they are like not responsible.

Accountability is important, and urban schools expect the Commission to be vigilant in ensuring that program rules are abided. But the responsibility of demonstrating program integrity should not be the sole responsibility of city school districts, and must be shared by all applicants, as well as the Administrator. For the E-Rate to continue to evolve, the Council hopes that increased responsiveness and improved services emanates from USAC, and that the required assurance that schools and libraries are playing by the rules does not rest disproportionately on the shoulders of those with the highest funding commitments.

Outside Consultants and Technology Planning

Urban schools support the Commission's goal of clamping down on vendor fraud in the E-Rate, and think that service providers, paid or unpaid, should certainly be required to identify themselves when they assist school districts in preparing their application. The Council feels that the best way to do this would be a simple disclosure on the application, similar to that which an accountant fills out when preparing an individual tax return. We are wary of a prolonged process, however, such as one that would require registering with USAC and having something similar to a SPIN number assigned to each provider. While we agree that accountability for E-Rate integrity must be expected from the companies that provide services, we do not support an extended activity that may deter an individual or company from providing much needed assistance to a school district.

The Commission must also reconsider the proposal to bar vendors that assist districts with their technology plan, or provide other technical and consulting services, from competing for E-Rate bids. E-Rate bidding rules, state laws, and local procurement compliance regulations, as well as SLD audits, are in place to ensure that improper relationships and invalid contracts are not established between applicants and service providers. But a wholesale debarment of those entities that provide a vital service to school districts ignores the longstanding relationships that may exist in certain communities, and the impracticality of performing long-term technology planning without the assistance of the company that will be providing the actual technology. The debarment also creates a problem when there are a limited number of service providers in a district's geographic area.

Conclusion

The Council of the Great City Schools appreciates the work of the Commission to improve the integrity of the E-Rate program and ensure that its benefits will continue to reach the nation's neediest students and schools in the future. In addition to the changes set forth by the Commission in the recent Order, which send a message to all participants, the strong leadership of the Administrator must ensure that these new rules are implemented in a way that enhances the reliability of the E-Rate program. Ongoing discussion, recent upgrades in staff, and a streamlined process at USAC must also be accompanied by a dedication to continuous service improvements and responsiveness to schools and libraries. Applicants from the large urban districts, who know the E-Rate is an invaluable partner in delivering high-quality education to inner-city students, have supported the program while working with meandering audits and laborious paperwork requests, inefficient response times to inquiries and appeals, and belated funding commitments for basic requests for telecommunications and maintenance services. The new rules require all E-Rate participants to converge and focus on program improvements, and the Council of the Great City Schools hopes that ongoing upgrades in the process and experience for applicants are an additional result of these new changes.

Respectfully Submitted,

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